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5 **UNITED STATES DISTRICT COURT**
6 **WESTERN DISTRICT OF WASHINGTON**
7

8 **SQWISH WORLD, LLC**

9 Plaintiff,

Civil Action No. 18-00528

10 vs.

11 **THE ORB FACTORY, LTD**

12 Defendant.
13

JURY TRIAL DEMANDED

14
15 **COMPLAINT**

16 Plaintiff Sqwish World, LLC (“Plaintiff” or “Sqwish World”), by and through its
17 undersigned attorneys, alleges the following for its complaint against Defendant ORB,
18 formally known as “The Orb Factory, LTD” (“Defendant” or “Orb”):

19 **I. PARTIES**

20 1.1 Sqwish World is a limited liability company organized and existing under the
21 laws of the state of Arizona and having a place of business located at 2610 E.
22 Mohawk Ln. #120, Phoenix, AZ 85050, USA.

23 1.2 On information and belief, Defendant is a Limited Company organized and
24 existing under the laws of the province of Nova Scotia, Canada and having a
25 place of business located at 225 Herring Cove Road, Halifax, Nova Scotia, B3P
26 1L3, Canada.

II. JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction under 28 U.S.C. §1331 and 15 U.S.C. §1121 because this action arises under the federal trademark and unfair competition laws of the United States, Title 15 Chapter 22 of the United States Code.

2.2 This Court has personal jurisdiction over Defendant because Defendant has conducted, and continues to conduct, business in this judicial district and, on information and belief, has engaged in activities related to Sqwish World's claims of unfair competition and federal trademark infringement that establish minimum contacts with the State of Washington, including having committed acts of federal unfair competition and federal trademark infringement in this judicial district, and the exercise of personal jurisdiction over Defendant is reasonable and fair. Personal jurisdiction over Defendant may be established under Fed.R.Civ.P. 4(k)(1)(A) and/or Fed.R.Civ.P. 4(k)(2).

2.3 Venue is proper in this judicial district pursuant to 28 U.S.C. §1391.

III. COMMON ALLEGATIONS

3.1 Sqwish World sells toys and computer software under the registered trademarks "SOFT'N SQUISHY" (US Registration #4019102), "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN SQWISHLAND" (US Registration #4052596), "SQWISH LAND" (US Registration #3872820), "SQWISHLAND" (US Registration #4055135), "SQWISHPAK" (US Registration #4271877), and "SQWISHCHARM" (US Registration #4635684), among others.

3.2 Registration of the mark "SOFT'N SQUISHY" was granted by the United States Patent and Trademark Office ("USPTO") on August 30, 2011, while registration of the mark "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN SQWISHLAND" was granted by the USPTO on November 8, 2011.

- 1 3.3 Plaintiff operates an interactive video game through the website
2 <http://sqwishland.com> where Plaintiff's products and marks are promoted.
- 3 3.4 On information and belief, The Orb Factory is a toy manufacturer located in
4 Halifax, Nova Scotia, Canada which was incorporated in 1990. Its products
5 include jewelry, room decors, notes, diaries, cards, jewelry boxes, and magnetic
6 art kits, as well as imaginative play, sparkling, pre-school fun, craft, and activity
7 supplies. The company sells its products through retailers in Canada, the United
8 States, and internationally. The Orb Factory Limited was incorporated in 1990
9 and is based in Halifax, Canada.
- 10 3.5 Sqwish World sells its trademarked products on-line through its website,
11 <https://shop.sqwishland.com>, through brick and mortar retail stores, e.g., Toys 'R
12 Us, via vending machines located at brick and mortar retail stores, as well as
13 through other on-line retailers such as Amazon.com.
- 14 3.6 Since January of 2011, Sqwish World has expended substantial resources in the
15 promotion and advertising of its marks "SOFT'N SQUISHY" and "IF IT'S SOFT
16 'N SQUISHY, IT BELONGS IN SQWISHLAND". Images representing
17 Plaintiff's products are attached as Exhibit A.
- 18 3.7 Sqwish World's use of its marks, "SOFT'N SQUISHY" and "IF IT'S SOFT 'N
19 SQUISHY, IT BELONGS IN SQWISHLAND", has been substantial and
20 continuous since January of 2011. A Combined Declaration of Use and
21 Incontestability Under Sections 8 & 15 was filed on the mark "SOFT'N
22 SQUISHY" on September 1, 2016. See attached Exhibit B1. A Combined
23 Declaration of Use and Incontestability Under Sections 8 & 15 was filed on the
24 mark "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN SQWISHLAND" on April
25 26, 2017. See attached Exhibit B2.
- 26 3.8 Orb filed intent to use applications on May 12, 2017, for the mark "SOFT'N SLO
SQUISHIES" as a standard character (i.e., word) mark and as a mark comprised
of words, letters, and/or numbers in stylized form under Serial Numbers
87447533 and 87447835, respectively.

3.9 On information and belief, Defendant makes toy characters and toy baked goods, along with toy fruit, which it sells under the brand name “SOFT’N SLO SQUISHIES”. See attached Exhibit C.

3.10 Defendant received an office action from the USPTO on August 17, 2017, informing them that their applications were being challenged because, inter alia, of a likelihood of confusion with Plaintiff’s marks “SOFT’N SQUISHY” and “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND”. See attached Exhibits D₁ and D₂.

3.11 Upon learning of Orb Factory’s use of its marks, Plaintiff made demands that Defendant cease and desist from using its marks. See attached Exhibit E. Defendant has so far refused and has denied that any “actual confusion” is occurring.

3.12 A simple internet search of the term “SOFT’N SQUISHY” demonstrates that when this term is typed into the search engines Bing.com, Yahoo.com, or Google.com, Defendant’s products are among the very first search results displayed. See attached Exhibits F₁, F₂, and F₃. A similar result occurs when the term “SOFT’N SQUISHY” is typed into the on-line retailers Amazon.com and Ebay.com. See attached Exhibits G₁ and G₂.

IV. COUNT I – FEDERAL TRADEMARK INFRINGEMENT OF REGISTRATION #4019102

4.1 Sqwish World repeats and realleges the allegations contained in paragraphs I through III as if fully set forth herein.

4.2 Defendant has used in interstate commerce, without authorization from Sqwish World, the mark “SOFT’N SQUISHY” in connection with the marketing, advertising, promotion, and sale of their toys.

4.3 Defendant’s use of the mark “SOFT’N SQUISHY” is likely to have caused confusion, to have caused mistake, and/or to have deceived purchasers as to the

source, of Defendant's toys or as to Defendant's affiliation, connection, approval, sponsorship, or association with Sqwish World.

4.4 Defendant's actions constitute infringement of Sqwish World's federally registered trademark for "SOFT'N SQUISHY" in violation of Section 32(a) of the Lanham Act, 15 U.S.C. §1114.

4.5 Defendant's infringing conduct has caused damage to Sqwish World's business, reputation, goodwill, profits, and the strength of Sqwish World's federally registered "SOFT'N SQUISHY" trademark.

4.6 On information and belief, Defendant was actively aware of Sqwish World and its "SOFT'N SQUISHY" federal trademark registration when they began selling their toys, yet proceeded anyway to use the mark "SOFT'N SQUISHY" in connection with their toys, thus rendering Defendant's infringement willful and deliberate.

**V. COUNT II – FEDERAL TRADEMARK INFRINGEMENT OF
REGISTRATION #4052596**

5.1 Sqwish World repeats and realleges the allegations contained in paragraphs I through IV as if fully set forth herein.

5.2 Defendant has used in interstate commerce, without authorization from Sqwish World, the mark "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN SQWISHLAND" in connection with the marketing, advertising, promotion, and sale of their toys.

5.3 Defendant's use of the mark "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN SQWISHLAND" is likely to have caused confusion, to have caused mistake, and/or to have deceived purchasers as to the source, of Defendant's toys or as to Defendant's affiliation, connection, approval, sponsorship, or association with Sqwish World.

5.4 Defendant's actions constitute infringement of Sqwish World's federally registered trademark for "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN

SQWISHLAND” in violation of Section 32(a) of the Lanham Act, 15 U.S.C. §1114.

5.5 Defendant’s infringing conduct has caused damage to Sqwish World’s business, reputation, goodwill, profits, and the strength of Sqwish World’s federally registered “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND” trademark.

5.6 On information and belief, Defendant was actively aware of Sqwish World and its “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND” federal trademark registration when they began selling their toys, yet proceeded anyway to use the mark “SOFT’N SQUISHY” in connection with their toys, thus rendering Defendant’s infringement willful and deliberate.

VI. COUNT III – FEDERAL UNFAIR COMPETITION (FALSE DESIGNATION OF ORIGIN OR SPONSORSHIP)

6.1 Sqwish World repeats and realleges the allegations contained in paragraphs I through V as if fully set forth herein.

6.2 Sqwish World’s “SOFT’N SQUISHY” trademark, which has been used in connection with Sqwish World’s products since at least Jan 20, 2011, is inherently distinctive and has acquired secondary meaning through long and sustained use in interstate commerce and through substantial advertising, promotion, and sales.

6.3 Defendant has used “SOFT’N SQUISHY” and is continuing to use, in interstate commerce and without authorization from Sqwish World in connection with the marketing, advertising, promotion, and sale of their toys.

6.4 Defendant’s use of the mark “SOFT’N SQUISHY” is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of Defendant’s toys or as to Defendant’s affiliation, connection, approval, sponsorship, or association with Sqwish World.

1 6.5 Defendant's actions constitute false designation of origin and false representation
2 in connection with the sale, distribution, and related interstate commercial activity
3 of their toys in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125.

4 6.6 Defendant's unfair competition in connection with the use of the mark "SOFT'N
5 SQUISHY" in interstate commerce has caused, is causing, and will continue to
6 cause damage to Sqwish World's business, reputation, goodwill, profits, and the
7 strength of the "SOFT'N SQUISHY" trademark.

8 6.7 On information and belief, Defendant was actively aware of Sqwish World and its
9 use of the "SOFT'N SQUISHY" trademark when they began selling their toys,
10 yet proceeded anyway to use the mark "SOFT'N SQUISHY" in connection with
11 their toys, and are continuing to sell their toys, thus rendering Defendant's
12 engagement in unfair competition willful and deliberate.

13 **VII. COUNT IV – COMMON LAW TRADEMARK INFRINGEMENT AND**
14 **UNFAIR COMPETITION**

15 7.1 Sqwish World repeats and realleges the allegations contained in paragraphs I
16 through VI as if fully set forth herein.

17 7.2 Defendant has used in interstate commerce, without authorization from Sqwish
18 World, the mark "SOFT'N SQUISHY" in connection with the marketing,
19 advertising, promotion, and sale of their toys.

20 7.3 Defendant's use of "SOFT'N SQUISHY" is likely to cause confusion, to cause
21 mistake, and/or to deceive as to the source of origin of Defendant's goods or
22 services.

23 7.4 Defendants actions in the State of Washington constitute trademark infringement
24 and unfair competition under the Common Law of Washington.

25 7.5 Plaintiff has been irreparably injured and will continue to be irreparably injured
26 unless the conduct of Defendant in the State of Washington is preliminarily and
permanently enjoined.

1 7.6 Upon information and belief, Defendant undertook the adoption of “SOFT’N
2 SQUISHY” willfully, or with reckless intention of trading upon the good will of
3 Plaintiff.

4 **VIII. COUNT V – VIOLATION OF THE WASHINGTON STATE**
5 **CONSUMER PROTECTION ACT, RCW 19.86, et seq.**

6 8.1 Sqwish World repeats and realleges the allegations contained in paragraphs I
7 through VII as if fully set forth herein.

8 8.2 On information and belief, Defendant has used in commerce, without
9 authorization from Sqwish World, the mark “SOFT’N SQUISHY” in connection
10 with the marketing, advertising, promotion, and sale of their toys.

11 8.3 Defendant’s use of “SOFT’N SQUISHY” is likely to cause confusion, to cause
12 mistake, and/or to deceive as to the source of origin of Defendant’s goods or
13 services.

14 8.4 Defendant’s actions in the State of Washington constitute trademark infringement
15 and unfair competition under the Common Law of Washington and are therefore
16 unfair or deceptive (misleading).

17 8.5 The public interest is affected by Defendants’ continued and repeated deceptive
18 conduct.

19 8.6 Plaintiff has been irreparably injured and will continue to be irreparably injured
20 unless the conduct of Defendant in the State of Washington is preliminarily and
21 permanently enjoined.

22 8.7 Upon information and belief, Defendant undertook the adoption of “SOFT’N
23 SQUISHY” willfully or with reckless intention of trading upon the good will of
24 Plaintiff.

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IX. RELIEF REQUESTED

WHEREFORE Sqwish World respectfully requests that this court enter a judgment that:

A. Finds Defendant has infringed Sqwish World's federally registered trademark for "Soft'n Sqwishy" in violation of 15 U.S.C. §1114;

B. Finds Defendant has infringed Sqwish World's federally registered trademark for "If It's Soft'n Sqwishy It Belongs in Sqwishland!" in violation of 15 U.S.C. §1114

C. Orders Defendant to recall and surrender for destruction all products, advertisements, and other materials and uses constituting trademark infringement or unfair competition against Plaintiff's rights;

D. Orders Defendant and any affiliated officers, directors, agents, servants, employees, successors, assigns, and all persons in active concert or participation with them, be permanently enjoined from infringing Sqwish World's federally registered "SOFT'N SQUISHY" and "IF IT'S SOFT 'N SQUISHY IT BELONGS IN SQWISHLAND!" trademarks.

E. Awards to Sqwish World profits gained by Defendant as a result of Defendant's federal trademark infringement and federal unfair competition, increased to an amount this court deems just, pursuant to 15 U.S.C. §1117;

F. Awards to Sqwish World actual damages sustained as a result of Defendant's federal trademark and federal unfair competition, increased by and up to three times, pursuant to 15 U.S.C. §1117;

G. Awards to Sqwish World statutory damages and attorney's fees, pursuant to 15 U.S.C. §1117;

H. Awards to Sqwish World costs and any additional damages to which Sqwish World is entitled as a result of Defendant's trademark infringement and unfair competition;

I. Awards to Sqwish World costs, pre-judgment and post-judgment interest at the maximum allowable rate, fees, and other such further relief as the Court deems just and proper.

1 J. Awards to Sqwish World treble damages and attorney's fees as allowed by RCW
2 19.86.090.

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4 DATED this 10th day of April, 2018.

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6 Respectfully submitted,

7
8 By /s/ Tom Hendrickson

9 TOM HENDRICKSON, WSBA# 41832
10 Attorney for the Sqwish World, LLC
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JURY TRIAL DEMANDED

Sqwish World demands a jury trial on all issues so triable.

DATED this 10th day of April, 2018.

Respectfully submitted,

By /s/ Tom Hendrickson

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INDEX OF EXHIBITS

- Exhibit – A: Images Representative of Plaintiff’s Products
- Exhibit – B: Combined Declarations of Use and Incontestability for Plaintiff’s Marks “SOFT’N SQUISHY” (B₁) and “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND” (B₂)
- Exhibit – C: Images Representative of Defendant’s Products
- Exhibit – D: Office Actions Received by Defendant’s for Their Trademark Application Numbers 87447533 (D₁) and 87447835 (D₂)
- Exhibit – E: Second Cease and Desist Letter Sent by Plaintiff to Defendant on November 24, 2017.
- Exhibit – F: Internet Search Results of the Term “SOFT’N SQUISHY” Obtained from Bing.com (F₁); Yahoo.com (F₂); and Google.com (F₃)
- Exhibit – G: Search Results of the Term “SOFT’N SQUISHY” Obtained from On-Line Retailers Amazon.com (G₁) and Ebay.com (G₂)